

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
SUBMITTED ON BRIEFS APRIL 20, 2001

**DWYANE ANDERSON v. DONAL CAMPBELL, ET AL.**

**Direct Appeal from the Circuit Court for Lauderdale County  
No. 5437; The Honorable Joseph H. Walker, Judge**

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**No. W2001-00318-COA-R3-CV - Filed July 25, 2001**

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This is an appeal by an inmate in the custody of the Tennessee Department of Correction. The inmate alleges civil rights violations pursuant to 42 U.S.C. § 1983. The court below dismissed the case for failure to state a claim. For the following reasons, we affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed**

ALAN E. HIGHERS, J., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY KIRBY LILLARD, J., joined.

Dwayne Anderson, Nashville, TN, *pro se*

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General, Dawn Jordan, Assistant Attorney General, for Appellee

D. Michael Dunavant, Ripley, TN, for Appellee, Gina Johnson

**MEMORANDUM OPINION<sup>1</sup>**

Dwayne E. Anderson (Anderson), is an inmate in the custody of the Tennessee Department of Correction. On November 10, 2000, Anderson filed a federal civil rights Complaint under 42 U.S.C. § 1983. He claimed that the Defendants had failed to properly investigate an incident

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<sup>1</sup> Rule 10 (Court of Appeals). Memorandum Opinion. – (b) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

between him and a correctional official. Specifically, Anderson claims he was sprayed in the eyes with a chemical agent “while attempting to explain . . . how minutes prior while serving breakfast, [a correctional official] had thrown the plaintiff’s milk onto the floor.” Furthermore, Anderson alleged in his complaint that Defendant Webb also “attempted to hit the plaintiff with a ‘riot stick’ which he brought with him into the pod, by jamming the stick through the [opening to Anderson’s cell].” Additionally, Anderson alleged in his complaint that his grievances relating to the incident were not handled properly. Apparently, the grievance chairperson sided with the correctional officials’ version of the incident instead of Anderson’s version. The correctional officials claimed that Anderson had refused to remove his arm from the “pie flap” in his cell, and that he had assaulted Correctional Officer Webb by grabbing Webb’s wrist. Anderson sought monetary and injunctive relief.

On December 18, 2000, Defendants filed a Motion to Dismiss Anderson’s Complaint. The trial court granted Defendants’ Motion to Dismiss on January 9, 2001. Defendant Gina Johnson filed her Motion to Dismiss on January 12, 2001, and the trial court granted the motion on January 16, 2001. Anderson filed his notice of appeal on February 2, 2001. Both parties allege issues on appeal.

#### **Mr. Anderson’s Issues**

- 1) Whether the trial court has subject matter jurisdiction.
- 2) Whether the trial court erred when granting the Defendants’ motion under Rule 12 of the Tennessee Rules of Civil Procedure without making any findings of fact and conclusions of law.

#### **Appellees’ Issues**

- 1) Whether the trial court correctly dismissed the Complaint on the grounds that Plaintiff failed to comply with section 41-21-801 *et. seq.* of the Tennessee Code.
- 2) Whether the trial court correctly dismissed the Complaint on the grounds that a judgment in his favor would imply the invalidity of Plaintiff’s disciplinary conviction for assault.
- 3) Whether the trial court correctly dismissed the Complaint on the grounds that Plaintiff’s claim that Defendants failed to investigate does not state a claim under 42 U.S.C. § 1983.
- 4) Whether the trial court correctly dismissed the Complaint on the grounds that Plaintiff failed to state a claim regarding handling of his grievances.

#### **Standard of Review**

Our standard of review on a motion to dismiss is *de novo* without a presumption of correctness because our inquiry is purely a question of law. See Carvell v. Bottoms, 900 S.W.2d 23, 26 (Tenn. 1995). In considering a Rule 12.02(6) motion to dismiss, we are required to take the allegations of the complaint as true, and to construe the allegations liberally in favor of the plaintiff. See Pemberton v. American Distilled Spirits Co., 664 S.W.2d 690, 691 (Tenn. 1984). A complaint should be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. See id. at 691.

## Law and Analysis

First, Anderson alleges that the trial court erred in finding that it did not have subject matter jurisdiction to hear his claim. We agree. In Poling v. Goins, 713 S.W.2d 305 (Tenn. 1986), our supreme court clearly held that “such [42 U.S.C. § 1983] actions may be brought and tried in the Tennessee state court system.” Id. at 306. Although we find that the trial court did have subject matter jurisdiction to hear Anderson’s claim, this does not change the outcome, as we ultimately hold that his complaint failed to state a claim upon which relief could be granted.

Next, he claims that the trial court erred in granting Defendants’ Rule 12 motion without making any findings of fact or conclusions of law. We disagree. Rule 52.01 of the Tennessee Rules of Civil Procedure states that “[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rules 41.02 and 65.04(6).” TENN. R. CIV. P. 52.01; see also Davis v. Weatherford, No. 01A01-9903-CV-00159, 1999 WL 969648, at \*5 (Tenn. Ct. App. Oct. 26, 1999). Therefore, this issue is without merit.

## Appellees’ Issues

First, the Appellees assert that the trial court correctly dismissed the complaint on the grounds that Anderson failed to comply with section 41-21-801 *et. seq.* of the Tennessee Code. Section 41-21-805 of the Tennessee Code states the following:

Any inmate who files a claim with an affidavit of inability to pay costs shall file a separate affidavit with the following information:

(1) A complete list of every lawsuit or claim previously filed by the inmate, without regard to whether the inmate was incarcerated at the time any claim or action was filed; and

(2) For each claim or action listed in subsection (a);

(A) The operative facts for which relief was sought;

(B) The case name, case number, and court in which the suit or claim was filed;

(C) The legal theory on which the relief sought was based;

(D) The identification of each party named in the action; and

(E) The final result of the action, including dismissal as frivolous or malicious under this part or otherwise.

(b) If the affidavit filed under this section states that a previous suit was dismissed as frivolous or malicious, the affidavit must state the date of the final order affirming the dismissal.

TENN. CODE ANN. § 41-21-805 (1997).

Anderson clearly failed to comply with section 41-21-805 of the Tennessee Code. In his Motion for a Declaratory Judgment, Anderson admitted that he has “filed a total of five (5) civil rights actions in the U.S. District Court, at Memphis, and all has [sic] been dismissed as frivolous.” Anderson then asserts that the procedures outlined in section 41-21-805 of the Tennessee Code are unduly

burdensome, and he asks the court to render the statute inapplicable to him. Upon review of the record, it is evident that Mr. Anderson failed to comply with the aforementioned statutory requirements. Therefore, we find that this was a proper basis for dismissal of his claim.

Second, the Appellees aver that the trial court correctly dismissed the complaint on the grounds that a judgment in Anderson's favor would imply the invalidity of his disciplinary conviction for assault. In Heck v. Humphrey, 512 U.S. 477 (1994), the Supreme Court held that a state prisoner's claim for damages is not cognizable under 42 U.S.C. § 1983 if "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence," unless the prisoner can demonstrate that the conviction or sentence has previously been invalidated. Id. at 487. In the instant case, Anderson asserts that he was improperly given a thirty day recreational restriction as a result of his assault on Defendant Webb. Because Anderson's claim necessarily asserts the invalidity of his disciplinary convictions, and because he has failed to show that his disciplinary convictions have been overturned, we find that his claim is not cognizable under 42 U.S.C. § 1983 and was thus properly dismissed.

Third, the Appellees argue that the trial court correctly dismissed the complaint on the grounds that Anderson's claim that Defendants failed to investigate does not state a claim under 42 U.S.C. § 1983. Anderson alleges that Defendants failed to take corrective action against Defendant Webb. We note that "[a] combination of knowledge of a prisoner's grievance and failure to respond or remedy the complaint is insufficient to impose liability upon supervisory personnel under § 1983." Henry v. Pogats, No. 92-74055, 1994 WL 462129, at \*2, (6<sup>th</sup> Cir. Aug. 25, 1994). Upon review of the record, we find that Anderson's allegations do not rise to the level of a violation of his constitutional rights. Therefore, we find that this was a proper basis for dismissal.

Finally, the Appellees assert that Anderson failed to state a claim regarding the handling of his grievances. We note the well settled proposition of law that "[t]here is no constitutional right to an effective grievance procedure." Ishaq v. Compton, 900 F. Supp. 935, 941 (W.D. Tenn. 1995) (citing Flick v. Alba, 932 F.2d 728, 729 (8<sup>th</sup> Cir. 1991)). As a result, we find that this was another proper basis on which to dismiss Mr. Anderson's claims.

### **Conclusion**

For all of the aforementioned reasons, we affirm the judgment of the trial court. Costs on appeal are taxed to plaintiff, Dwayne Anderson, for which execution may issue if necessary.

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ALAN E. HIGHERS, JUDGE